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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 221

MURPHY CORPORATION
and
NATURAL GAS AND OIL CORPORATION, PETITIONERS

versus

RUFUS W. FONTENOT, COLLECTOR OF REVENUE,
STATE OF LOUISIANA, RESPONDENT

NATURAL GAS AND OIL CORPORATION
and
MURPHY CORPORATION, PETITIONERS

versus

RUFUS W. FONTENOT, COLLECTOR OF REVENUE,
STATE OF LOUISIANA, RESPONDENT

(Consolidated Cases)

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR CERTIORARI

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Murphy Corporation and Natural Gas and Oil Corporation pray that this Court grant a rehearing of its order of October 14, 1954, denying the petition for Writ of Certiorari filed herein on July 19, 1954, and further pray that upon rehearing a Writ of Certiorari issue to review the judgment of the Supreme Court of Louisiana in these cases as prayed for in the petition.

REASONS FOR GRANTING A REHEARING AND ISSUING THE WRIT

I.

In addition to the reasons assigned in the petition for certiorari petitioners show that the writ should be granted because of the conflict between the decision in these cases by the Supreme Court of Louisiana and decisions by the highest courts of certain other states moreover other states will certainly follow the Louisiana decision, thereby creating further inconsistency in the law relating to jurisdiction over federal lands.

Since the filing of the petition for a writ of certiorari in these cases there has been published the decision by the Supreme Court of Arkansas in *Ludwig* vs. *Nance*, 267 S.W. 2d 314, wherein a conclusion was reached which is diametrically opposed to the holding of the Louisiana Supreme Court. Under a cession statute which cannot be distinguished from Louisiana's, Arkansas had granted exclusive jurisdiction to the United States over Hot Springs National Park, but state authorities attempted to enforce Arkansas laws regulating the practice of massage in privately owned bath houses. This was resisted on the ground that exclusive jurisdiction over the lands was vested in the United States and state laws were inapplicable thereon even though the bath houses had been leased to private persons and were being operated by them for their personal profit and advantage.

In *Commonwealth* vs. *King*, 68 S.W. 2d 45, Kentucky held that where the United States leased a portion

of Fort Knox to a bank, the State of Kentucky had no right to try a clerk of that bank under its criminal statutes. The Court said, "The mere fact that the building in which the offense was committed had been leased by the United States to the Union Bank of Stilton and was not being used at the time for military purposes is not controlling on the question of jurisdiction".

This case, the Ludwig case from Arkansas and numerous cases from other states cannot be reconciled with the holding of the Louisiana Supreme Court in the present cases. The Kentucky Court cited as its guide and discussed *Arlington Hotel Company vs. Fant*, 278 U.S. 439, *Benson vs. United States*, 146 U.S. 325 and *United States vs. Unzueta*, 281 U.S. 138. These cases were also followed by Arkansas. The Louisiana Court ignored them.

In *Arapajolu vs. McMenamin*, 340 P. 2d 310, a California court permitted a resident on property over which the United States had acquired exclusive jurisdiction to vote in California elections on the theory that concurrent jurisdiction over the lands was being exercised by both the United States and California because the Congress had seen fit to surrender to the states certain rights such as levying income and sales taxes and enforcing workmen's compensation and unemployment insurance laws. The Court said:

> "****It is clear that the Congress has surrendered to the states jurisdiction in substantial particulars over federal lands over which the United

States previously had exclusive jurisdiction. It may no longer be said of those lands that they are, as said by the Ohio Court in Sinks v. Reese, supra, 'as foreign to Ohio (California) as is the State of Indiana or Kentucky, or the District of Columbia.' "

In almost every state are lands belonging to the United States over which it exercises exclusive jurisdiction by virtue of consent and cession statutes. These laws were drafted in cooperation with federal authorities and are almost identical with the exception of certain reservations made by the states (these being immaterial here because Louisiana did not reserve the right to tax). The highest courts of most of these states have thus far upheld the paramount jurisdiction of the Federal Government over such areas and have denied to the states the power and authority to tax or regulate therein, unless expressly authorized by the Congress of the United States,' thus falling in line with the uniform holdings of this Court to that effect. *Surplus Trading Co. v. Cook*, 281 U.S. 647. *S.R.A. vs. Minnesota*, 327 U.S. 558. *Bowes vs. Johnson*, 306 U.S. 19.

The Louisiana decision and the California decision quoted from above, with Kentucky and Arkansas recently taking the opposing view, followed by most of the state

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1. Illustrative are: Johnson vs. Merrill (Cal.) 126 P. 2d 873; Schribner vs. Wickstrom (N.H.) 34 Atl. 2d 658; O'Pry Heating & Plumbing Co. vs. State (Ala.) 3 So. 2d 316; Employers Liability Assur. Corp. vs. Dileo (Mass.) 10 N.E. 2d 251; State vs. Deberry (N.C.) 32 S. E. 2d 617; State vs. Mack (Nev.), 47 P. 763; Lowe vs. Lowe (Md.) 133 A. 729; Independent School District of City of El Paso vs. Central E. D. Agency (Tex.) 247 S. W. 2d 597; Chaney vs. Chaney (N.M.) 209 Pacific 2d 782.

courts and this Court forcibly point up the confusion which is almost certain to arise hereafter with respect to the question involved and decided in these cases.[2]

Other cases, one involving the right of the state and parish to levy ad valorem taxes on property of petitioners herein located on Barksdale Air Force Base, and the other involving the right of the state and parish to levy ad valorem taxes upon a pipe line of a third corporation extending across Barksdale Air Force Base, are now pending in the District Courts of Louisiana.[3] In *Surplus Trading Co. vs. Cook*, supra, ad valorem taxes on property of private parties situated on Camp Pike, Arkansas, were involved and this Court held that such could not be imposed for lack of legislative authority in the state over the area. It can thus be seen that the state and the parish, certainly in the pipe line litigation, are now taking a position contrary to the holding in *Surplus Trading Co. vs. Cook* and thereby are attempting to thwart in every way possible the right of the Federal Government with respect to exclusive jurisdiction.

Likewise, Louisiana, through its Commissioner of Conservation, has for the first time undertaken to regulate the production and transportation of oil and gas pro-

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2. The Supreme Court of Louisiana unquestionably held that by granting the lease to petitioner, the United States relinquished its exclusive jurisdiction over the leased premises.

3. Natural Gas and Oil Corporation vs. W. E. Waggoner, Sheriff, No. 19,044, 26th Judicial District Court of Louisiana, and Interstate Oil Pipe Line Co. vs. Sheriff, No. 19,628, of said Court.

duced from these federal lands[4] in conflict with the authority of the Secretary of the Interior as contained in the lease here involved and appropriate federal regulations. This has occurred since the decision in these cases, and it is obvious that this exercise of authority results therefrom because for the three years prior thereto oil and gas had been produced solely under the authority of the Secretary of the Interior and the state had not undertaken to impose its authority. This could well afford another avenue of litigation which undoubtedly will find its way to this Court as it will be a conflict between a department of the Government of the United States and Louisiana.

If Louisiana is allowed to regulate the production and transporation of oil and gas on these lands through her regulatory body, then other states will undoubtedly follow this precedent and the Secretary of the Interior, who has authority over such matters under federal law, will be powerless to act irrespective of the wisdom of such state regulatory measures.

Further, the denial of Certiorari here will doubtless invite states and their taxing subdivisions to seize on all possible areas of taxation and regulation of activities on military lands. Already a city court is exercising civil jurisdiction over a large portion of the Barksdale Base. If this decision is allowed to stand, state authorities will be thus invited to broaden the scope of their control over

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4. Orders dated July 23, 1954, and October 11, 1954.
1954.

military areas, even to the point of carrying into effect thereon state political and social philosophy in the fields of civil liberties and racial segregation.

Arlington Hotel Co. vs. Fant, supra, was a case where this Court granted Certiorari to review a state court decision of Arkansas, whose consent and cession statute is similar to Louisiana's. The need for a Supreme Court decision in that case was apparent. Now Louisiana has decided the instant cases which appear to conflict with the Fant case. Thus, because of varying decisions by the Courts of Louisiana and California on the one hand and Courts of Arkansas, Kentucky and numerous other states on the other hand, again there has arisen the necessity for a review by this Court of the situation. If *Benson vs. U.S.*, supra, *U. S. vs. Unzeuta*, supra, *Arlington Hotel Co. vs. Fant*, supra and even *Surplus Trading Co. vs. Cook*, supra, are not still the law, then they should be overruled after full consideration of the principles involved and not by allowing state courts flagrantly to disregard them through the refusal by this Court to review their decisions.

If this case is allowed to stand, then the highest Court of each of the forty-eight states could place a different interpretation on an identical statute, and the rights of the United States would depend on the vagaries of a State Judge.

II.

Surely this Court should not refuse to review these decisions on the ground that they constitute an interpre-

tation by a state court of state laws. First, the extent of the rights granted to the United States under state consent to purchase and cession laws constitutes a federal question subject to interpretation by federal courts. *Silas Mason Company vs. Tax Commission of Washington*, 302 U. S.186, 197.[5] Second, it is not believed that the state court construed Louisiana's cession statute. We will discuss these points in order.

1. If it can be said that the state supreme court attempted to interpret Louisiana's consent and cession statutes as granting exclusive jurisdiction only when the property is used solely for military purposes, it becomes apparent that such an interpretation, without foundation therefor in the statutes, is not binding upon this Court in view of the fact that "it does violence to federal rights based upon the statute", and defeats the exclusive legislative authority of the federal government which the statute clearly purports to give and which the record discloses the Federal Government clearly expected to secure and maintain.

2. Act 12 of 1892 (appearing in full on pages 5 and 6 of the petition for certiorari) was passed by the

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5. This Court in the cited case, after stating that a Federal question was involved in that the state court had construed Washington's Statute, said (302 U.S. 207):
"We should accept that construction [by state court] unless we are satisfied that it does violence to federal rights based upon the statute, defeating the reasonable anticipation and purpose of securing through the operation of the statute an essential legislative authority for the Federal Government."

Louisiana legislature following an opinion by William Howard Taft, Solicitor General, dated January 25, 1892, which found an 1882 act to be deficient. When the lands comprising Barksdale Air Force Base were acquired by the Government in 1930, Act 12 of 1892 was in effect and all rights granted thereunder permanently attached subject to the right of the Congress to retrocede. Subsequently in 1942, Louisiana passed Act 31 (quoted in full on page 6 of the Petition for Certiorari). This act was an amendment to Act 12 of 1892 and amplified same. It was even broader than the former statute and granted additional legislative authority to the United States. Since the Barksdale lands were the property of the Government at that time, such additional rights as may have been ceded by the 1942 act became vested in the United States subject again to the authority of the Congress to retrocede. The author of the majority opinion of the Supreme Court of Louisiana was apparently unaware of the distinction between consent to purchase and cession statutes for nowhere in the opinion are the latter quoted, paraphrased, construed, or even discussed. In fact, the Louisiana Revised Statutes of 1950 are quoted as the law on the subject. This revision was adopted by the Legislature in 1950 and was to be a simplification and codification of Louisiana's laws. The person preparing the section relating to this subject can be said not to have understood the problem because in redacting Act 12 of 1892, as amended by Act 31 of 1942, he completely dropped the cession provisions of those statutes.

We had not attached any significance to the failure of the Supreme Court of Louisiana to consider the cession statute in effect at the time these lands were acquired and the one subsequently adopted because the court held that exclusive jurisdiction was vested in the United States over the property in question, but want to note everything which may have had bearing on the refusal to review these cases.

Also, we feel that this decision goes far beyond being an alleged construction of the state statute. The opinion (1) construes Article 1, paragraph 8, clause 17, of the Constitution of the United States; (2) cites and discusses the decision of this Court in *Fort Leavenworth Railroad Company vs. Lowe*, 114 U.S. 525, dealing with exclusive jurisdiction of the United States; (3) reviews at length the jurisprudence of this Court on the subject of immunity of the Government and its instrumentalities from state taxation (which petitioners have never asserted and which they contend are inapplicable here) and says that such decisions are in effect the foundation on which the conclusions reached by the court can be built; and (4) quotes from and construes a government contract of lease as requiring petitioners to pay a state tax which otherwise might not be due.

Even if the Louisiana decision in these cases involves an interpretation of Louisiana's cession statute, the highest court of the land should certainly review this decision because of the many federal questions of import-

ance which were reviewed, discussed, and apparently decided by the Supreme Court of Louisiana.

We believe it can be safely said that not only the petitioners but the State of Louisiana, the Department of the Air Force, the Interior Department, and probably the Department of Justice, all have assumed in this proceeding that the basic jurisdictional question here presented would be decided by this Court. Especially could this be so because Louisiana did not appear herein, opposing the petition for certiorari. This Court, by its order of October 14, 1954, in declining to review the Federal questions presented thereby accentuated rather than clarified the confusing situation .

Surely no public or private interest can be served by postponing this Court's consideration of the question of jurisdiction here involved until other cases conclude the long and laborious journey to this Court. Because of the importance of the question, it will doubtlessly be raised again and again throughout the nation unless set at rest. It may be assumed that this Court does not believe that this basic jurisdictional question is too unimportant to deserve the attention of this Court, and therefore should be committed permanently to the consideration of State tribunals.

CONCLUSION

For all the foregoing reasons, Murphy Corporation and Natural Gas and Oil Corporation pray that this petition for rehearing be granted, and that upon rehearing its petition for writ of certiorari be reinstated and granted.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

We hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

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PROOF OF SERVICE

I, Clarence L. Yancey, one of the attorneys for Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on November 5, 1954, I served a copy of the foregoing Petition for Rehearing on Rufus W. Fontenot, Collector of Revenue, State of Louisiana, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to John B. Smullin, Esquire, his Chief Counsel and Attorney of record, at his office in the State Office Building, Baton Rouge, Louisiana.

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